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8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA  
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11 FERNANDO VIVANCO-ZAMBRANO,

12 Petitioner,

13 v.

14 WARDEN, FCI-MENDOTA,

15 Respondent.  
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No. 1:23-cv-01328 JLT SKO (HC)

ORDER ADOPTING FINDINGS AND  
RECOMMENDATIONS, GRANTING  
RESPONDENT'S MOTION TO DISMISS,  
DISMISSING PETITION FOR WRIT OF  
HABEAS CORPUS, AND DIRECTING  
CLERK OF COURT TO ENTER JUDGMENT  
AND CLOSE THE CASE

(Docs. 10, 13)

17 Fernando Vivanco-Zambrano is a federal prisoner proceeding *pro se* and *in forma*  
18 *pauperis* with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. Respondent  
19 moved to dismiss the petition. (Doc. 10.) The assigned magistrate judge found the underlying  
20 petition was moot, because evidence provided by Respondent demonstrated Petitioner received  
21 the requested relief and was released from custody on November 17, 2023. (Doc. 13 at 2.)  
22 Therefore, the magistrate judge recommended the motion to dismiss be granted. (*Id.* at 3.)

23 The Court served the Findings and Recommendations at the only address on record for  
24 Petitioner—at FCI Mendota—and the document was returned as “Undeliverable, No Longer at  
25 this Address,” consistent with his release from custody. Despite the mail return, the Court finds  
26 service shall be deemed fully effective pursuant to Local Rule 182(f).

27 According to 28 U.S.C. § 636(b)(1)(C), this Court performed a *de novo* review of this  
28

1 case. Having carefully reviewed the matter, the Court concludes the Findings and  
2 Recommendations are supported by the record and proper analysis.

3 In the event a notice of appeal is filed, a certificate of appealability will not be required  
4 because this is an order denying a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241,  
5 not a final order in a habeas proceeding in which the detention complained of arises out of  
6 process issued by a state court. *Forde v. U.S. Parole Commission*, 114 F.3d 878 (9th Cir. 1997);  
7 *see Ojo v. INS*, 106 F.3d 680, 681-682 (5th Cir. 1997); *Bradshaw v. Story*, 86 F.3d 164, 166 (10th  
8 Cir. 1996). Thus, the Court **ORDERS**:

- 9 1. The Findings and Recommendations issued on January 5, 2024 (Doc. 13) are  
10 **ADOPTED** in full.
- 11 2. Respondent's motion to dismiss (Doc. 10) is **GRANTED**.
- 12 3. The petition for writ of habeas corpus is **DISMISSED** with prejudice.
- 13 4. The Clerk of Court is directed to enter judgment and close the case.
- 14 5. In the event a notice of appeal is filed, no certificate of appealability is required.

15  
16 IT IS SO ORDERED.

17 Dated: **February 9, 2024**

  
UNITED STATES DISTRICT JUDGE